

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **06-MSRC-001**

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

**FINAL ORDER**

**CLYDE J. DINGESS**

**RESPONDENT**

\* \* \* \* \*

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent CLYDE J. DINGESS, and the members of the Commission having reviewed the Settlement Agreement filed on April 10, 2006 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

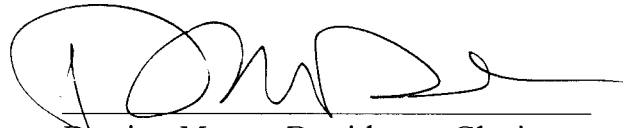
1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy

of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 13<sup>TH</sup> day of April 2006.

A handwritten signature in black ink, appearing to read 'DM Davidson', written over a horizontal line.

Denise Moore Davidson, Chair  
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 14<sup>TH</sup> day of April 2006:

CLYDE J. DINGESS  
P.O. BOX 334  
BELFRY KY 41514

# 7006 0100 0005 2636 5135

And by messenger mail to:

HON. STEPHEN C. BOYD  
GENERAL COUNSEL  
OFFICE OF LEGAL SERVICES  
NATURAL RESOURCES LEGAL DIVISION  
#2 HUDSON HOLLOW  
FRANKFORT KY 40601  
502/ 564- 2356  
FAX 502/ 564 - 9212

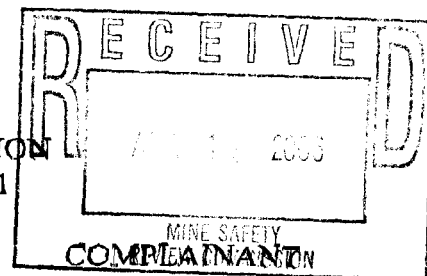
And the original shall be kept on file:

Mine Safety Review Commission  
132 Brighton Park Blvd.  
Frankfort Ky 40601



Bryon Alan Thompson  
Hearing Officer & General Counsel  
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. 06-MSRC-001



KENTUCKY OFFICE OF MINE SAFETY & LICENSING

V. SETTLEMENT AGREEMENT BETWEEN OMSL & CLYDE J. DINGESS

CLYDE J. DINGESS

RESPONDENT

\* \* \* \* \*

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent, Clyde J. Dingess ("Dingess"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this action against him, and the cancellation of the hearing (as it pertains to him) that is currently scheduled for April 13, 2006. Respondent Dingess hereby agrees to the following:

1. The probation of his underground mine foreman's certificate (#A-180-02) for a period of six (6) months, effective upon the signing of this Settlement Agreement by both parties.

2. During this ~~one-year~~ <sup>Six-months</sup> probationary period, Dingess shall comply with all state and federal mine safety laws and regulations. The willful violation by Dingess of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground miner's certificate for the remainder of the probationary period.

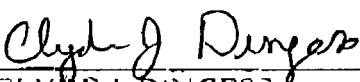
3. Dingess further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(13).

4. Respondent also states that his counsel has contacted the federal Mine Safety and Health Administration regarding statements in Paragraph No. 8 of the Complaint that "These

violations have been duly and lawfully referred to OMSL by MSHA for prosecution before the Mine Safety Review Commission." Counsel for MSHA stated to Respondent's counsel that this case was not sent to OMSL for prosecution or forwarded with any recommendation for action to be taken. MSHA District 6 only gave the state notice of the settlement of Mr. Dingess' MSHA case.


5. Dingess further states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions, and that he agrees to waive all rights to a formal hearing in this matter.

OMSL and Dingess acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

  
CLYDE J. DINGESS  
P.O. Box 334  
Belfry, Kentucky 41514

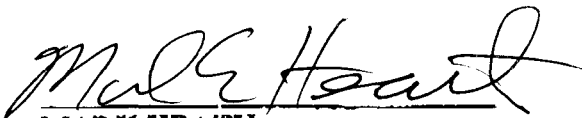
3-16-06

DATE

  
JOHNNY GREENE, Acting Executive Director  
KY Office of Mine Safety & Licensing  
P.O. Box 2244  
Frankfort, Kentucky 40602

4-11-06

DATE

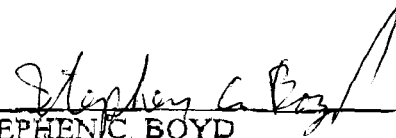
  
MARK HEATH  
Spillman Thomas & Battle, PLLC  
300 Kanawha Blvd. East  
P.O. Box 273  
Charleston, West Virginia 25321-0273

Mar. 22, 2006

DATE

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Settlement Agreement between OMSL and Clyde J. Dingess was mailed this 12 day of April, 2006, to:  
Clyde J. Dingess.

  
STEPHEN C. BOYD  
C. MICHAEL HAINES, GENERAL COUNSEL  
OFFICE OF LEGAL SERVICES  
NATURAL RESOURCES LEGAL DIVISION  
KY OFFICE OF MINE SAFETY & LICENSING  
#2 HUDSON HOLLOW  
FRANKFORT, KENTUCKY 40601